LIM LEAN HIN, RE

HIGH COURT MALAYA, PULAU PINANG
MOHD. DZAIDDIN ABDULLAH J
[ORIGINATING SUMMONS NO. 24-665-91]
9 DECEMBER 1991

SUCCESSION: *Revocation or amendment of the will - Applicant one of the executors and trustees under the will has become unfit to carry on his duties by reason of brain surgery - Order 71 r. 36 RHC 1980 & s. 34 of the Probate and Administration Act 1959.*

This is an *ex parte* application for the revocation of an appointment of an executor and trustee under the will on the ground that the applicant, by reason of brain surgery, has become unfit to carry on his duties as one of the executors and trustees under the said will.

By a Grant of Probate dated 27 February 1980 the applicant was appointed together with his brothers as executors and trustees of the estate of their grandfather - the deceased who died on 8 September 1976 leaving a will dated 14 August 1976. On 13 February 1973 the said will was produced and registered in the Court. It was also observed that under para. 7 the statutory power of appointing a new trustee or trustees shall be vested in the trustees.

In the supporting affidavit affirmed on 17 August 1991, the applicant who was 60 years old stated that in December 1989 he underwent brain surgery and was advised or recommended to undergo radiation therapy. For this reason, he felt that he could not continue his duties as a co-executor and wanted to retire. The remaining co-executors filed their consent to the applicant's application.

Held:

[1] Section 34 of the Probate and Administration Act 1959 provides that any probate or letters of administration may be revoked or amended for any sufficient cause. A grant may be revoked where the executor or administrator becomes incapable of acting by reason of mental disorder or mental or physical ill-health. It further states that the real object which the Court always keeps in view is the due and proper administration of the estate and the interest of the parties beneficially entitled to it.

[2] In the instant case, there is clear evidence from the consultant neuro-surgeon's report on the applicant's brain surgery and his recommendation for follow-up therapy. Secondly, the remaining co-executors consented to his retirement. Thirdly, they are also residuary legatees under the said will and looking at the assets of the estate, it is not substantial and the estate duty had been settled. I am satisfied that the administration of the estate will not be hindered with the retirement of the applicant and further the interest of the beneficiaries will not in anyway be jeopardised.

[Order in terms of the application.]

Case referred to:
Re Galbraith [1951] 2 All ER 470 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 71 r. 36
Probate and Administration Act 1959, s. 34

Other source referred to:
Halsbury Laws of England 4th Edn., Vol. 17 para. 1060 - "Revocation for purpose of better administration."

For the applicant - Ian Lim; M/s. Lim Cheng Chuan & Co.

JUDGMENT

Mohd. Dzaiddin Abdullah J:

This is an *ex-parte* application for the revocation of an appointment of an executor and trustee under the will on the ground that the applicant, by reason of brain surgery, has become unfit to carry on his duties as one of the executors and trustees under the said will.

I think this is a novel application because there appears to be no reported local case which allowed a revocation or amendment of the will to be made on the above ground.

The Facts:

By a Grant of Probate dated 27 February 1980, the applicant was appointed together with his brothers as executors and trustees of the estate of their grandfather, Lim Eow Thoon, deceased, who died on 8 September 1976 leaving a will dated 14 August 1976. On 13 February 1979, the said will was produced and registered in this Court. Paragraph l of the said will states as follows:

> I hereby appoint my grandsons Lim Lean Teik, Lim Lean Hin, Lim Lean Seng and Lim Lean Huat all of Penang and Tan Hooi Khoon of Singapore to be my executors and trustees of this my will and they or other or others the trustee or trustees for the time being of this my will are hereinafter called my trustees.

It is also important to note that under para. 7 the statutory power of appointing a new trustee or trustees shall be vested in the trustees.

In his supporting affidavit affirmed on 17 August 1991, the applicant who was 60 years old stated that in December 1989 he underwent brain surgery and was advised or recommended to undergo radiation therapy. For this reason, he felt that he could not continue his duties as a co-executor and wanted to retire. The remaining co-executors filed their consent to the applicant's application.

The Law

Section 34 of the Probate and Administration Act 1959 provides that any probate or letters of administration may be revoked or amended for any sufficient cause. On procedure, see O. 71 r. 36 Rules of the High Court 1980. *The Halsbury's Laws of England*, 4th Edn., Vol. 17 para. 1060 under the heading "Revocation for purpose of better administration," states that a grant may be revoked where the executor or administrator becomes incapable of acting by reason of mental disorder or mental or physical ill-health. It further states that the real object which the Court always keeps in view is the due and proper administration of the estate and the interest of the parties beneficially entitled to it (*Re Loveday* [1900] p. 154 at 156).

In *Re Galbraith* [1951] P 422, [1951] 2 All ER 470, the application to revoke the probate of the will was made on the ground that the two surviving executors were unable to continue to perform their duties by reason of advanced age and physical and mental infirmity. Karminski J in making the order held that there was the clearest evidence that both the surviving executors were of advanced age and suffering from such a degree of physical and mental infirmity as makes a continuance of their duties impossible. The learned Judge also applied the principles stated in *Loveday* (*supra*).

Thus, in the instant case, I need to apply the above principles. First, there is clear evidence from the consultant neuro-surgeon's report on the applicant's brain surgery and his recommendation for follow-up therapy. Secondly, the remaining co-executors consented to

his retirement. Thirdly, they are also residuary legatees under the said will and looking at the assets of the estate, it is not substantial and the estate duty had been settled. All in all, I am satisfied that the administration of the estate will not be hindered with the retirement of the applicant and further, the interest of the beneficiaries will not in any way be jeopardised.

For the above reasons, I make an order in terms of the application.

Also found at [1992] 1 CLJ 707